HARBANS KAUR KESAR SINGH & ORS v. ASSOCIATED PAN MALAYSIA CEMENT SDN BHD & ANOR

HIGH COURT MALAYA, SHAH ALAM
LIM CHONG FONG JC
[CIVIL SUIT NO: MT3-22-1836-2007]
28 MAY 2015

LAND LAW: *Vacant possession – Plaintiffs occupied bungalow affixed on land – First defendant sought for vacant possession – Plaintiffs' refusal to vacate – Mining lease granted to first defendant – Whether first defendant a lessee – Whether plaintiffs incurred expenses to maintain property – Whether plaintiffs had legal interest in property – Whether property built on a heritage site – Whether plaintiffs occupied land as licensees – Whether plaintiffs entitled to occupy property and remain on land throughout subsistence of license – Whether license revoked – Whether compensation granted to plaintiffs – National Land Code, s. 5*

The plaintiffs initiated this suit for a declaration that they were the lawful occupiers of a bungalow ('the property') built on a land which was leased by the Selangor State Government to the first defendant. The first defendant, on the other hand, sought to recover vacant possession of the bungalow with the view to demolish it in order to complete a river diversion scheme. The original first plaintiff ('Mahindar Singh') had passed away and his estate stepped in as substitution in this suit. The first defendant was a company involved in the business of manufacturing cement and the registered mining lease holder of the land. The mining lease was granted by the Selangor State Government on 1 January 1984 for 20 years which expired on 31 December 2003. After its expiry, the mining lease was extended for another term of 21 years. The second defendant was a major shareholder of the first defendant. The facts revealed that around 1950, Berjuntai Tin Dredging Ltd ('Berjuntai Tin') built several bungalows which included the property on the land. It was asserted that the property was designed in the 1930s Sino Malay Palladian architecture. Berjuntai Tin then sold the property to one Pologa Nathan. Thereafter, Pologa Nathan sold the property to Mahindar Singh's mother, *ie*, Gurtha Kaur for a consideration of RM3,500. Gurtha Kaur assigned all her rights and interests in the property to Mahindar Singh. On or around 2002, the first defendant agreed with the Selangor State Government to undertake a project to divert Sungai Rawang which ran through the land. The project also involved the provision of free houses or housing lots to relocate occupiers living on the land. However, Mahindar Singh did not enter into the relocation agreement with the first defendant. As a result, it was argued that the river diversion project could not be completed due to the plaintiffs' refusal to vacate the property. Over the years since March 1960, the property was occupied by the plaintiffs' family. It was alleged that the property was connected with

water and electricity supply and the plaintiffs had operated a lorry transportation business on the property. On 4 December 2006, the first defendant's solicitors served an eviction notice on Mahidar Singh's solicitors. However, Mahindar Singh did not give vacant possession of the property and subsequently filed this suit. The plaintiffs argued, *inter alia*, that they had incurred considerable expenses to maintain the property. The plaintiffs sought for an order that in the event they were required to vacate the property, the defendants had to pay them compensation as assessed by the court. The first defendant counterclaimed, *inter alia*, for (i) an order that the plaintiffs vacate the property; and (ii) an order that the plaintiffs demolish the property at their own costs and expenses failing which the first defendant would demolish the said property. The defendants argued that the plaintiffs were squatters without legal standing to occupy the property. The issues that arose for determination were in relation to (a) the legal status of the first defendant in respect of the land including whether the property was on the land and a heritage site; (b) the legal status of the plaintiffs in respect of their occupation on the property; and (c) the resultant consequences of the remedies.

Held (allowing first plaintiff's claim in part):

(1) The first defendant was the lessee of the land pursuant to the continuation of the mining lease issued under the Mineral (Selangor) Enactment 2000. The property was located within the land and it was not subjected to the National Heritage Act 2005 for the purposes of this suit. (paras 31, 36 & 39)

(2) Gurtha Kaur purchased the bungalow house and not the land upon which the house was affixed. Mahindar Singh had applied to the Selangor State Authority but was unsuccessful in having the land on which the property was affixed to be alienated to him. Pursuant to the National Land Code, the plaintiff could only acquire a legal interest in the property if they were the registered proprietors or lessees of the land on which the property was affixed. However, this was not the case. (paras 40, 41 & 43)

(3) Section 5 of the National Land Code defines land which includes, *inter alia*, "all things attached to the earth or permanently fastened to any thing attached to the earth, whether on or below the surface". In other words, any fixture such as a building that was affixed onto the land belonged to the land. The first defendant was aware of the existence of various occupants residing in houses on the land, including Mahindar Singh and his family, who were living in the property when the mining lease was initially granted to it in 1984. However, the defendants did not promise nor represented to the plaintiffs that they were entitled to occupy the property in perpetuity but did not eject them as well. (paras 46 & 52)

(4) The first defendant's offer to relocate was made on a goodwill *ex gratia* basis and Mahindar Singh was required to surrender vacant possession of the property by 3 January 2007. This offer was genuine in the attempt to amicably resolve the problem of recovery of the property between the parties but without admission of any liability to the plaintiffs. The plaintiffs were not squatters *simpliciter* and the defendants did not represent nor encouraged the plaintiffs to believe that they had an interest in the land where the property was affixed. The plaintiffs were licensees as they settled on the land and occupied the property with the permission of the first defendant's predecessor as well as with the knowledge of the first defendant when the mining lease was granted in 1984. (paras 53 & 54)

(5) Mahindar Singh was a licensee coupled with equity. The other plaintiffs were bare licensees and it was immaterial for purposes of importation of equity if several of these plaintiffs were running business on the property over the years. The plaintiffs were only entitled to occupy the property and remain on the land throughout the subsistence of the licence. In this case, the licences were revoked on 3 January 2007. The rights under a mining lease was provided under s. 70 of the Mineral (Selangor) Enactment 2000. The first defendant as the lessee of the land had the right to issue the notice to quit to the plaintiffs to recover vacant possession of the land. Further, they had the right to demolish the property when vacant possession was obtained in order to divert the river that flows through the land. (paras 54, 55 & 57)

(6) The first defendant's recovery of vacant possession of the land had to be subject to compensation in satisfaction of the equity of Mahindar Singh who was a licensee coupled with equity. No compensation was payable to the other plaintiffs who were bare licensees. Although the plaintiffs asserted that upgrading or improvements were made to the property, there was no documentary evidence produced, particularly the costs expended. The value of compensation was adjudged at RM3,500. Consideration was given to the fact that the plaintiffs had occupied the property without rent in excess of 50 years. The compensation could not be on the basis of an equivalent landed property at market prices. In the circumstances, the estate of Mahindar Singh was entitled to a sum of RM15,000 as costs for moving out. The first plaintiff was allowed compensation for the amount of RM18,500. As for the counterclaim, the date of the giving of vacant possession and demolition of the property had to be made within six months from the service of the sealed order of the court. (paras 58, 59, 61 & 62)

Case(s) referred to:

Associated Pan Malaysia Cement Sdn Bhd v. Westwood Development Sdn Bhd [2012] 2 CLJ 81 HC ***(refd)***

Associated Pan Malaysia Cement Sdn Bhd v. Westwood Development Sdn Bhd [2013] 10 CLJ 95 HC ***(refd)***

Bohari Taib & Ors v. Pengarah Tanah & Galian Selangor [1991] 1 CLJ 647; [1991] 1 CLJ (Rep) 48 SC ***(refd)***

Cheng Hang Guan & Ors v. Perumahan Farlim (Penang) Sdn Bhd & Ors [1994] 1 CLJ 19 HC ***(refd)***

Ganesha Sdn Bhd lwn. Chua Hock Chye & Lain-Lain [1996] 1 LNS 97 HC ***(refd)***

Holee Holdings (M) Sdn Bhd v. Chai Him & Ors [1997] 1 LNS 424 HC ***(refd)***

Hong Leong Bank Bhd v. Goh Sin Khai [2005] 3 CLJ 24 HC ***(refd)***

Lee Eng Teh & Ors v. Teh Thiang Seong & Anor [1966] 1 LNS 79 HC ***(refd)***

Letchumi Ammal Chellapa v. Nam Fong Housing Sdn Bhd [1982] CLJ 295; [1982] CLJ (Rep) 168 FC ***(dist)***

Liaw Kar Tay & Ors v. Superintendent of Lands & Surveys Limbang Division & Anor [2014] 9 MLJ 401 ***(refd)***

Pembangunan Darjat Sdn Bhd v. Wong Jie Tshung & Ors [2000] 1 LNS 5 HC ***(refd)***

Sentul Murni Sdn Bhd v. Amirudin Kamarudin & Ors [2000] 4 CLJ 375 CA ***(refd)***

Templeton & Ors v. Low Yat Holdings Sdn Bhd & Anor [1992] 1 LNS 7 HC ***(refd)***

Toh Kheng Heng & Anor v. Ahmad Fauzi Mohd Taufek [1994] 1 CLJ 547 HC ***(refd)***

Wan Salimah Wan Jaffar v. Mahmood Omar; Anim Abdul Aziz (Intervener) [1998] 1 CLJ 480 HC ***(refd)***

Legislation referred to:

Evidence Act 1950, s. 43

Mineral (Selangor) Enactment 2000, ss. 2(2), 70

National Heritage Act 2005, s. 2

National Land Code, s. 5

Other source(s) referred to:

Teo Keang Sood & Khaw Lake Tee, *Land Law in Malaysia: Cases and Commentary*, 2nd edn, p 232

For the plaintiffs - V Vishnu Kumar (Sarita Ashok Khandhar with him); M/s Alvin John & Partners

For the defendants - Leong Wai Hong (Eyza Farizan Mokhtar & Witter Yee with him); M/s Skrine

Reported by Kumitha Abd Majid

JUDGMENT

Lim Chong Fong JC:

Introduction

[1] This is a suit brought by the plaintiffs principally to seek a court declaration that they are lawful occupiers of a bungalow built on land leased by the Selangor State Government to the first defendant. The first defendant is on the other hand seeking to recover vacant possession of the bungalow with the view to demolish it to complete a river diversion scheme.

[2] The plaintiffs comprise of individuals of a Sikh family and private incorporated companies owned by several of the aforesaid individuals who reside and occupy a bungalow having postal address No. 4 Jalan Kuala Garing 48000 Rawang, Selangor Darul Ehsan ("property") built on land held under Master Title Lot No. 20146 (formerly known as Lot 4222), PA 103485, Mukim Rawang, Gombak, Selangor Darul Ehsan ("land"). The original first plaintiff, Mahindar Singh has since passed away and I have on 10 March 2015 allowed the application by his estate to step-in in substitution.

[3] The first defendant is a private incorporated company involved in the business of manufacturing cement and the registered mining lease holder of a mining lease on the land until 30 December 2003. The mining lease was thereafter extended for another term of 21 years. The first defendant is presently extracting limestones from the land.

[4] The second defendant is an incorporated company and a major shareholder of the first defendant.

The Trial Process

[5] The trial of this suit took two days on 10 and 18 March 2015. The trial documents comprised of bundles A to I including documentary evidence in bundles B, C, H and I which were consented by the parties to be of status A and unconditional status B as stated therein. In the course of the trial, exhs. P1 to P12 were also admitted in evidence.

[6] The witnesses of the plaintiff were:

(i) N Chandera (PW1), a former employee of Berjuntai Tin Dredging Ltd;

(ii) Mas Ayu binti Mohd Tahir (PW2), an assistant curator of the Jabatan Warisan Negara (National Heritage Department);

(iii) Azizah binti Ibrahim (PW3), an assistant legal officer of the Pejabat Tanah Daerah Gombak (Gombak District Land Office);

(iv) Maljindar Singh Sidhu Brar s/o Mahindar Singh (PW4), the seventh plaintiff himself;

(v) Tony Chew (PW5), a deputy director of the Jabatan Mineral dan Geosains Selangor (Selangor Minerals and Geosciences Department);

(vi) Ahmad Fuad bin Mustafa (PW6), a senior assistant director of the Pejabat Tanah Dan Galian Selangor (Selangor Lands and Mines Office);

(vii) Harbans Kaur d/o Kesar Singh (PW7), the second plaintiff herself;

(viii) Mundeep Singh s/o Mahindar Singh (PW8), the fifth plaintiff himself;

(ix) Ranjit Singh s/o Mahindar Singh (PW9), the third plaintiff himself;

A (x) Kartar Singh s/o Santa Singh (PW10), a previous occupier in a house near the property; and

(xi) Engkannah s/o Sinniah (PW11), also a previous occupier in another house near the property.

B **[7]** The defendants' witnesses were:

(i) Dato Tan See Hang (DW1), a former State Assemblyman for Rawang and member of the Executive Council of the Selangor State Government; and

C (ii) Wong Kee Meng (DW2), the director of quarry, land and environment of the first defendant.

[8] After the close of trial, the parties submitted simultaneous written submissions in chief and in reply as directed. There was oral clarification held with counsel on 7 May 2015 and the parties thereafter submitted D further case authorities as requested.

Background Facts

[9] Around 1950, Berjuntai Tin Dredging Ltd was the holder of a mining lease issued by the Selangor State Government and the property was situated on the land held under the mining lease. E

[10] As lessee of the mining land, Berjuntai Tin Dredging Ltd built several bungalows which included the property to house their employees. The property was elegantly designed in the 1930s Sino Malay Palladian architecture and constructed with a built up area of about 10,000 square F feet on land area of approximately three quarters of an acre.

[11] In 1959, Berjuntai Tin Dredging Ltd sold the property to one of its employees, a Pologa Nathan s/o Muthiah.

[12] On 9 March 1960, Pologa Nathan s/o Muthiah resold the property to Gurtha Kaur d/o Kishan, the mother of Mahindar Singh deceased for a G consideration of RM3,500 as evidenced by a memorandum of transfer to that effect.

[13] Subsequently on 28 March 1989, Gurtha Kaur d/o Kishan assigned all her rights and interests in the property to Mahindar Singh deceased as evidenced by a deed of assignment to that effect. H

[14] The first defendant was granted a mining lease on the land by the Selangor State Government on 1 January 1984 for 20 years which expired on 31 December 2003 pursuant to a Perakuan Melombong 16 ("mining lease").

I **[15]** By a letter dated 16 August 2002, the first defendant applied to the Pejabat Tanah dan Galian Selangor to renew the mining lease for a further period of 21 years. The renewal application covered Lot 4222 of 348.38 acres, Lot 266 of 1.48 acres and an unnumbered state land of 2.47 acres.

[16] By a letter dated 26 April 2004, the Pejabat Tanah dan Galian Selangor replied that the first defendant's application was approved and the first defendant has recently received a letter dated 29 April 2014 from the Pejabat Tanah dan Galian Selangor stating that it is in the process of issuing the renewed mining lease to the first defendant. A

[17] Meanwhile on or around 2002, the first defendant agreed with the Selangor State Government to undertake a project to divert Sungai Rawang which ran through the land to mitigate flooding in the nearby Kampung Kuala Garing. The project also involved the provision of free houses or housing lots by the first defendant to relocate occupiers living on the land to the northern zone of the land. B C

[18] In the implementation of the river diversion project, the first defendant carried out a survey to ascertain a register of eligible occupants. Mahindar Singh deceased was listed as an eligible occupant.

[19] Accordingly the first defendant proposed to Mahindar Singh deceased to enter into a relocation agreement but that was rejected by him. D

[20] The other occupiers of the land accepted and executed the relocation agreement and have since relocated to the 124 single storey terrace link houses developed by the first defendant at the north zone of the land, now known as Desa Kuala Garing. E

[21] However the river diversion project could not be completed todate by reason of the plaintiffs' refusal to vacate the property. There remains about a 100 metres of river alignment to be completed that will cut across the property but was kept suspended because of the need to demolish the property. F

[22] Over the years since March 1960, the property was occupied by plaintiffs' family of three generations. The property is connected with water and electricity supply and the plaintiffs had maintained and also upgraded the property. The property has now seven rooms, a large kitchen, a workshop which is connected to the main building and worker's quarters. There are two extended covered car porches and a guard house at the entrance. G

[23] The plaintiffs also operated a lorry transportation business on the property. H

[24] As the result of Mahindar Singh's deceased refusal to accept the relocation agreement and move out from the property, the first defendant's solicitors on 4 December 2006 served an eviction notice on Mahindar Singh's solicitors. It precipitated in further exchanges of letters between the solicitors of both parties and ultimately the plaintiffs' filing of this suit on 30 October 2007. I

A **Contentions Of The Plaintiffs**

[25] The primary contention of the plaintiffs is that they have at all material times the right of occupancy of the property in law and in equity on the facts of the case. In addition and by reason that the plaintiffs had incurred considerable expenses maintaining and upgrading the property, the B defendants are estopped on the basis of promissory or equitable estoppels in denying the plaintiffs' right of occupancy and interfering with the undisturbed possession as well as the quiet and peaceful enjoyment of the property.

C **[26]** As such the plaintiffs claimed, amongst others, for the following:

(i) a declaration that they are the lawful occupiers of the property;

(ii) an order that in the event the plaintiffs are required to vacate the property, the defendants must pay them compensation as assessed by the court;

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(iii) various injunctions restraining the plaintiffs from evicting, commencing legal process of summary possession of land, etc against the defendants as well as from demolition of the property; and

(iv) damages including aggravated and exemplary damages.

E **Contentions Of The Defendants**

[27] In defence, the defendants put the plaintiffs to strict proof and responded that the plaintiffs were instead squatters without legal standing to continue to occupy the property. Accordingly the first defendant counterclaimed, amongst others, for the following:

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(i) an order that the plaintiffs vacate the property, failing which the first defendant will execute against the plaintiffs for vacant possession of the land; and

(ii) an order that the plaintiffs demolish the property at their own costs and G expenses, failing which the first defendant will demolish the property.

Issues For Determination

[28] From the pleadings, lists of issues and the closing submissions of the parties, the issues can in my view be broadly summarised and reduced to H the following for determination *seriatim*:

(i) the legal status of the first defendant in respect of the land including whether the property was on the land and a heritage site;

(ii) the legal status of the plaintiffs in respect of their occupation of the I property; and

(iii) the resultant consequences and remedies.

Findings Of The Court

Legal Status Of The First Defendant In Respect Of The Land

[29] It is not disputed that the first defendant had the mining lease from 1 January 1984 to 31 December 2003.

[30] It is also not disputed that the first defendant has to date not obtained the renewed mining lease following its written application to the Pejabat Tanah dan Galian Selangor on 16 August 2002. Nonetheless, the Pejabat Tanah dan Galian Selangor had on 16 April 2004 replied that the application was approved and extended for 21 years and on 29 April 2014 informed the first defendant that the mining lease is in the process of being issued.

[31] The defendants submitted notwithstanding that the renewed mining lease has yet to be issued, it is nonetheless enforceable as an agreement for a lease quoting the leading textbook *Land Law in Malaysia: Cases and Commentary* (2nd edn) by Teo Keang Sood and Khaw Lake Tee at p. 232 that: "It appears to be settled that in Malaysia, an unregistered lease is void as a lease but good and enforceable as an agreement for a lease".

In this regard, it is also seen in the case of *Wan Salimah Wan Jaffar v. Mahmood Omar; Anim Abdul Aziz (Intervener)* [1998] 1 CLJ 480; [1998] 5 MLJ 162 where Abdul Malik Ishak J (as he then was) held as follows at p. 499 (CLJ); pp. 182-183 (MLJ):

> Applying these authorities, it is correct to say that the written agreement (P1) though void at law as a lease because of non-registration as required under s. 221(4) of the NLC, yet it is good as an agreement enforceable in equity. **The parties intended that there should be a lease and equity must be invoked to carry that intention into effect effectively**. An equitable relief once given to the plaintiff would clothe her with the status of a legal lessee. It is germane to mention that there is s. 206(3) of the NLC which enacts that nothing in sub-s. (1) shall affect the contractual operation of any transaction relating to alienated land or any interest therein. In my judgment, a liberal application of the equitable relief within the terms of s. 206(3) of the NLC must be construed in favour of the plaintiff. (emphasis added)

[32] In the circumstances, I find and hold that the first defendant is for all intents and purposes the lessee of the land pursuant to the continuation of the mining lease issued under the Mineral (Selangor) Enactment 2000.

[33] Be that as it may, it is seen that in a related case involving the first defendant in *Associated Pan Malaysia Cement Sdn Bhd v. Westwood Development Sdn Bhd* [2012] 2 CLJ 81; [2012] 7 MLJ 149, Amelia Tee Hong Geok J held as follows at p. 90 (CLJ); pp. 157-158 (MLJ):

A [32] *It is not in dispute that the plaintiff was a lessee of the Quarry Land located at ML. 6 Lot 4222 Bandar Rawang, Daerah Gombak, Selangor for mining purposes under section 63 of the Mineral Enactment (Selangor) 2000*. It is also not in dispute that the Majlis Mesyuarat Kerajaan Negeri Selangor had on 13.8.2003 approved the plaintiff's application for a mining lease for a period of 21 years subject to conditions. This is reflected in the PTG
B Selangor letter dated 26.4.2004. (emphasis added)

[34] Also in the subsequent case between the same parties in *Associated Pan Malaysia Cement Sdn Bhd v. Westwood Development Sdn Bhd* [2013] 10 CLJ 95; [2014] 7 MLJ 384, Vazeer Alam Mydin Meera JC (now J) said as follows at pp. 104-107 (CLJ); pp. 406-408 (MLJ):

C **Does the plaintiff have a valid mining lease?**

[9] The Mineral (Selangor) Enactment 2000 ('MSE') regulates the issuance of mining leases in the State of Selangor. Section 2 of the MSE defines mining lease and mining land as follows:

D 'mining lease' means a mining lease granted under section 63 and a mining lease granted or issued under any previous written law relating to mining; and

'mining land' means any land in respect of which a mining lease or proprietary mining licence is for the time being in force.

E [10] It is common ground that the state authority had issued the plaintiff a mining lease dated 1 January 1984 ('the old mining lease') for a period expiring on 31 December 2003. Section 124 of the MSE provides that:

Every mining lease or mining certificate subsisting at the
F commencement of this Enactment shall continue to be in force under the Mining Enactment Selangor under which it was issued until the expiration thereof.

[11] *Therefore, the plaintiff had a valid mining lease expiring on 31 December 2003. A mining lease may be renewed under s. 66(2) of the MSE and once the*
G *application for renewal is made at least 12 months prior to the expiry of the mining lease, s. 66(9) of the MSE provides that the term of the lease shall continue in force in respect of the land to which the application relates until the application is determined.*

[12] Again there is uncontroverted evidence that the plaintiff had applied for the renewal of the mining lease 12 months before expiry and the
H Majlis Mesyuarat Kerajaan Negeri Selangor (MMKN) had on 13 August 2003 approved the plaintiff's application for a renewed period of 21 years, subject to conditions. This is reflected in the approval letter.

[15] Therefore, it is my finding that pursuant to the provisions of s. 66(9) of the MSE, the term of the old mining lease shall continue in
I force until the renewal application is determined with finality and a fresh mining lease certificate is issued by the relevant authority ...

[18] *Therefore, I find that by virtue of the mining lease, the application for renewal of the mining lease, the conditional approval granted by MMKN, and by operation of s. 66(9) of the MSE, the plaintiff has a valid and subsisting mining lease over the mining land even though a fresh mining lease certificate has not been issued.* (emphasis added)

[35] Although both these judgments are not binding on me pursuant to s. 43 of the Evidence Act 1950, I nonetheless observed that my learned sister and brother at law shared similar views based on the same facts.

[36] As to the exact location of the property, it was alluded to by the plaintiffs at the trial that the property might not be within the boundary of the land. PW4 testified that the property was built on Lot 177 which was situated alongside Lot 4222. It is however an agreed fact in para. 1 of bundle E that the land presently known as Lot 20146 was previously known as Lot 4222. This is supported by the letter from the Jabatan Mineral dan Geosains Selangor/Wilayah Persekutuan dated 30 May 2007 which stated that: "... latar belakang Perakuan Lombong No. 16, Lot 1641 dan Lot 177 (kini dikenali sebagai Lot 4222) seperti dipohon hendaklah dirujuk kepada Pejabat Tanah dan Daerah Gombak" as well the survey plan of Lot 4222 dated 26 April 1967 which clearly stated that "Lot 4222 comprises Lot 177...".

[37] Consequently, I find and hold that the property is indeed located within the land.

[38] The plaintiffs have also alluded at the trial that the property that was designed in the Sino Malay Palladian style is a recognised design style in historical buildings and hence a registrable building under the National Heritage Act 2005. In this regard, s. 2 of the National Heritage Act defined a "heritage item" as "any National Heritage, heritage site, heritage object or underwater cultural heritage listed in (National Heritage) Register".

[39] It is plain that the property is not listed in the National Heritage Register (buildings) and PW2 testified that the property was not so categorised as endangered. In addition, she testified that the Jabatan Warisan Negara has not issued any order for the conservation of the property.

[40] In the premises, I find and hold that the property isn't subjected to the National Heritage Act 2005 for the purposes of this suit.

Legal Status Of The Plaintiffs In Respect Of Occupation Of The Property

[41] In respect of the property, it is not disputed that Gurtha Kaur d/o Kishan, the mother of Mahindar Singh deceased purchased only the bungalow house but not the land upon which the house is affixed from Pologa Nathan s/o Muthiah. This is confirmed in the testimonies of PW1 and PW4. In this regard PW1 answered as follows at the trial:

Q : So your confirmation at 177 was that only the building was sold?

A : Correct.

Q : Not the land where the building? Sorry?

A : No. Only the building was sold, not the land as for my knowledge.

Likewise, PW4 answered as follows:

Q : Would you agree that the sale only related to the bungalow and not the land upon which the bungalow sits?

A : Yes correct, My Lord.

[42] It is also undisputed that Mahindar Singh deceased had applied to the Selangor State Authority but was unsuccessful in having the land on which the property is affixed to be alienated to him.

[43] Nevertheless the plaintiffs submitted that they have resided in the property with peaceful and quiet enjoyment complete with the supply of water and electricity for many years. Moreover they have maintained and improved the property. In addition, the first defendant offered to Mahindar Singh deceased to enter into a relocation agreement in consideration of vacating the property. In the circumstances, the plaintiffs must have acquired a legal or equitable interest in the property.

[44] Pursuant to the National Land Code 1965, the plaintiffs can only acquire a legal interest in the property if they are the registered proprietors or lessees of the land on which the property is affixed. This is plainly not the case.

[45] Nonetheless and although Malaysian land law is based on the Torrens system as codified in National Land Code, Edgar Joseph Jr J (as he then was) in *Templeton & Ors v. Low Yat Holdings Sdn Bhd & Anor* [1992] 1 LNS 7; [1993] 1 MLJ 443 held as follows at pp. 459-460:

> *I recognise that the effect of s. 284 of the Code is that an easement can only be created by express grant followed by registration of an instrument in Form 17A or Form B prescribed by s. 286(1), as the case may be. But, s. 206(3) of the Code contains an express provision which states that the provisions of the Code requiring dealings to be effected in the statutorily prescribed manner shall 'not affect the contractual operation of any transaction relating to alienated land or any interest therein'.*
>
> *In Yong Tong Hong v. Siew Soon Wah & Ors 6, by resort to the doctrine of equitable estoppel and in the name of construction, although the agreement was not a proper instrument for registration as a lease, yet the Federal Court treated it as an agreement for a lease and entitling the appellant to a lease for 30 years under s. 221(3)(b) of the Code. As Ong CJ put it at p. 108, 'The validity of contracts relating to alienated land or any interest therein is explicitly declared in s. 206(3) of the National Land Code'.*

This provides statutory authority for the liberal application of equity whenever there is a basis for that as the following cases will serve to reinforce.

In *Mercantile Bank Ltd v. The Official Assignee of the Property of How Han Teh 7*, Raja Azlan Shah J (as His Majesty then was) had occasion to issue the reminder that 'independent of our land legislation our courts have always recognised equitable and contractual interests in land. See *Loke Yew v. Port Swettenham Rubber Co* [1913] AC 491. See also s. 206(3) of the Code'.

In *Inter-Continental Mining Co Sdn Bhd v. Societe Des Etains De Bayas Tudjuh 8*, the agreement between the parties was in substance a sublease of mining land though not in statutory form, and was treated as effective as an agreement to enter into a sublease to which s. 206(3) of the Code applied, and equity would specifically enforce it.

In *Margaret Chua v. Ho Swee Kiew & Ors 9*, the Federation Court of Appeal had to consider the legal effect of an agreement in writing which was incapable of registration as a lease. It was thus incapable of conferring upon the purported lessees any real interest in the land and so as a lease it was a nullity. Thomson CJ speaking for the court considered (at p. 175 col 2A and B) 'that although the agreement might be a nullity as a lease, it could be, and indeed was, a good enforceable agreement for a lease under which the appellant as registered proprietor had undertaken the obligation to grant a lease'.

A far better case on the point, than those thus far cited, is the *New Zealand case of Mayor of Wellington v. Public Trustee 10*.

In order to create an easement over land, the New Zealand Land Transfer Act 1885, by s. 76, requires that a memorandum of transfer in Form C in the second schedule is to be executed and registered.

Clearly, therefore, in New Zealand, just as in our country, no easement affecting land under the Act can in law be created except in the manner provided by the Act.

In *Mayor of Wellington v. Public Trustee 10*, it was held in the court below that an equitable easement had been created by the agreement in question in favour of the plaintiff, but it conferred no right to have the agreement specifically performed by the grant of a legal easement *in lieu* thereof, and that if the plaintiff had desired to obtain a legal easement by grant under the Land Transfer Act, express provision for that purpose should have been inserted in the agreement. The opinion was further expressed that the only remedies of the plaintiff under the agreement are: (i) an action for damages against the other party; and (ii) an action for an injunction against the other party or against any assignee acquiring land with notice of the agreement.

On appeal to the Court of Appeal, it was held, allowing the plaintiff's appeal, that the agreement for an easement having been made for valuable consideration, was one in respect of which the court had jurisdiction to grant specific performance, and an order may be made for the execution of a formal registrable instrument evidencing the rights conferred by the agreement.

Hosking J speaking for the court said, *inter alia*, this (at p. 1099):

> Now, as the document in question is not registered it does not create, and as it is not in registrable form it is not available to create, anything more than what may be termed an equitable interest, as distinguished from the protected proprietory interest which would be conferred by registration of an instrument in proper form creating the easement. Then, has the court jurisdiction to grant the relief sought by the appellant - namely, an order that the public trustee as the executor of the deceased shall executed a registrable instrument evidencing the right? We think there is jurisdiction on the ground that the deceased and the corporation agreed for valuable consideration that there should be a grant, which fails merely for want of form. This basis of equitable relief is illustrated by *Parker v. Taswell2 De G & J* 559.
>
> *I might as well add that I do not consider that the case of United Malayan Banking Corp Bhd & Anor v. Pemungut Hasil Tanah Kota Tinggi 11 presents an obstacle to paras. 7 and 8 of the orders I had made. That case was not concerned with equitable principles applicable to a vendor-purchaser situation but with the question of whether those equitable rules of English law which have to do with relief against forfeiture have any application to forfeiture of alienated land for non-payment of quit rent to the state authority duly brought about under the Code. The Privy Council answered this question in the negative because the relevant provisions of the Code evince an intention that the English rules of equity relating to relief against forfeiture should not be available to proprietors of alienated land.*
>
> In the present case, we are not concerned with the problem of relief against forfeiture for non-payment of quit rent to the state authority but with s. 206(3) of the Code which does expressly provide that the provisions of the Code requiring dealings to be effected in the statutorily prescribed manner shall 'not affect the contractual operation of any transaction relating to alienated land or any interest therein'. (emphasis added)

[46] It can hence be said that the intervention of equity is situational depending on the peculiar facts of each case so long that it does not offend or is inconsistent with the express provisions in the National Land Code.

[47] For purposes of the definition of land in relation to a mining lease, s. 2(2) of the Mineral (Selangor) Enactment 2000 refers back to the National Land Code 1965. In s. 5 of the National Land Code, land is defined as:

> "land" includes:
>
> (a) that surface of the earth and all substances forming that surface;
>
> (b) the earth below the surface and all substances therein;
>
> (c) all vegetation and other natural products, whether or not requiring the periodical application of labour to their production, and whether on or below the surface;

(d) all things attached to the earth or permanently fastened to any thing attached to the earth, whether on or below the surface; and

(e) land covered by water;

Put simply, any fixture such as a building that is affixed onto the land belongs to the land as per the maxim *quid quid plantatur solo, solo cedit*.

[48] According to the plaintiffs, they are considered settlers following the supreme court case of *Bohari Taib & Ors v. Pengarah Tanah & Galian Selangor* [1991] 1 CLJ 647; [1991] 1 CLJ (Rep) 48; [1991] 1 MLJ 343 where Mohamad Azmi SCJ held as follows at p. 52 (CLJ); p. 346 (MLJ) that involved occupiers who were pioneer settlers of the agricultural land in dispute:

> In allowing the respondent's application under O. 89, the learned judge had relied almost entirely on the *LESCO* case [1984] 2 MLJ 123 and *Sidek*'s case [1982] 1 MLJ 313. With respect, these two decisions of the Federal Court are no authorities for the scope and application of O. 89. *In our opinion, for the purpose of the summary procedure, a distinction should be made between squatters simpliciter who have no rights whatsoever, and occupiers with licence or consent, and as well as tenants and licensees holding over*. It may be impossible to establish the existence of any triable issue in the case of bare squatters, but the position of tenants and licensees holding over, or persons occupying with implied or expressed consent of the owner may be different. On the facts, we hold that there are triable issues on the absence of either licence or consent as alleged by the respondent. Evidence *viva voce* is required not only on the alleged consent of the respondent to the appellants' occupation rendering their entry lawful, but also on whether the approval of the state authority to the alienation of the lands to the appellants and the other occupiers had been given in 1980 under s. 42 of the National Land Code 1965. In this case, we also find that the respondent has failed to comply with r. 3(b) of O. 89 by its failure to disclose fully in its affidavit-in-support, the whole of the relevant circumstances how the lands came to be occupied by the appellants both before and after the three-year period of the TOL, and why the approval of the State Executive Council to the alienation of the lands to the farmers as contained in the collector's letter of 25 October 1980, was neither exhibited nor implemented. (emphasis added)

[49] Furthermore, Augustin Paul JC (as he then was) in the high court case of *Holee Holdings (M) Sdn Bhd v. Chai Him & Ors* [1997] 1 LNS 424; [1997] 4 MLJ 601 held as follows at p. 635 and pp. 640-642:

> The principles underlying the local law of proprietary estoppel were lucidly stated by Salleh Abas FJ (as he then was) in *Mok Deng Chee v. Yap See Hoi & Ors* [1981] 2 MLJ 321 at p. 323 in the following terms:
>
> > The law on tenancy coupled with an equity or simply an equitable estoppel arose from the speech of Lord Kingsdown in *Ramsden v. Dyson* (1866) LR 1 HL 129 in which his Lordship referred to the principle as irrevocable licence. This principle was accepted and

applied by the Privy Council in *Plimmer v. The City of Wellington* (1884) 9 App Cas 699. *Finally, it received its judicial refinement in Inwards v. Baker [1965] 1 All ER 446. In this case Lord Denning MR defined the concept as follows*:

> *It is quite plain from these authorities that, if the owner of land requests another or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with equity … that the equity arising from the expectation of land does not fail …. The court can look at the circumstances and see whether there is an equity arising out of the expenditure of money.*

The principle is also known as equitable estoppel, because the landowner whose conduct has raised an expectation of his tenant of being allowed to stay on and thereby inducing him to spend money in respect of the tenancy is prevented from taking any action contrary to that expectation.

In the development of our law this principle was recognised as long ago as 1916 in the case of *MPRL Karuppan Chetty v. Suah Thian* (1916) 1 FMSLR 300. It was applied by Chang Min Tat J (as he then was) in *Devi v. Francis* [1969] 2 MLJ 169. Finally, it became a settled law as a result of decision of the Federal Court in *Yong Tong Hong v. Siew Soon Wah & Ors* [1971] 2 MLJ 105, which decision was subsequently confirmed by the Privy Council ([1973] 1 MLJ 133). Its practical application was demonstrated in a decision of Syed Othman J whose judgment was confirmed by the Federal Court in *Tan Swee Ho Co Ltd v. Ali Hussein Bros* [1980] 1 MLJ 89 and in the decision of Abdoolcader J in *Wong Yon Lin v. Liew Tham Soon & Ors* [1980] 2 MLJ 99.

The local law reports show that the principle laid down in *Inwards v. Baker* has been consistently followed here without being diverted by the '*probanda*' of Fry J (see for example, *Lee Eng Teh & Ors v. Teh Thiang Seong & Anor* [1967] 1 MLJ 43; *Lee Lum Soh v. Low Ngah* [1973] 1 MLJ 97; *Ong Heng Hwa Realty Sdn Bhd v. Teoh Chai Siok* [1977] 1 MLJ 124; *Paruvathy v. Krishnan* [1983] 2 MLJ 121; *Cheng Hang Guan & Ors v. Perumahan Farlim (Penang) Sdn Bhd & Ors* [1988] 3 MLJ 90; *Ganesha Sdn Bhd v. Chua Hock Chye* [1996] 5 MLJ 587; *Saadian bte Karim v. Ong Ting Chai* [1996] 5 MLJ 646 and *Rosman bin Hj Abdul Rashid v. Rosmah Begum bte Bahadur Beg* [1993] 2 MLJ 196). Thus the modern approach in England is the law as it was, and which still is, in force in Malaysia. Equity, being an unruly horse, had perhaps taken a wild run in England in *Willmott v. Barber* (1880) 15 Ch D 96 and was harnessed in Taylors Fashions Ltd.

I shall now briefly deal with the three elements that must be proved in order to establish a proprietary estoppel, namely: (a) assurance; (b) reliance and (c) detriment ...

There was evidence to show that LLT had allowed the first defendant to occupy a portion of Lot 184 and to build a house on it in 1957. He had expended money in putting up the house and had planted fruit trees on the portion of land occupied by him. The fruit trees that he

had planted constituted the sole source of his income. Two of his children were born in that house. I must observe that cases of this nature must be read in the light of the facts of a particular case (see *Electrolux Ltd v. Electrix Ltd* (1954) 71 RPC 23). No direct evidence was adduced by the first defendant on the interest that he believed he would have had on the portion of the lands occupied by him as LLT only gave him permission to occupy a portion of the lands and build a house there. The representation by LLT was therefore not clear and unequivocal. Even though there was no evidence of an expectation of a precise legal term, the court may look at the circumstances and see whether there was an equity arising out of the expenditure of money (see *Inwards v. Baker* [1965] 2 QB 29). In this type of case, the extent of the expenditure and the nature of the construction may give an indication of the nature of the interest (see *Ooi Ai Seng v. Chan Lin Lam* [1973] 2 MLJ 20)...

However, in certain circumstances, uninterrupted occupation may lead rise to an inference of the existence of an equity. In the Canadian case of *R v. Smith* (1981) 113 DLR (3d) 522, the Crown was held, by virtue of its long inaction with knowledge that the subject land was being occupied by non-Indians, to have stood by and acquiesced in various improvements made by the respondent and his predecessor in occupation. The Crown, through both the provincial and federal government, knew of the occupation of the land by non-Indians from 1838 onwards but never took steps to regularise the position. In view of the Crown's passive conduct, it was held unconscionable for it to recover the land from the respondent without compensation for the improvements made. That of course is not the position in the case of the first defendant. Thus there is no evidence to reach any conclusion that LLT had led the first defendant into the belief or expectation that upon him expending money in building the house he could remain there for as long as he liked or for a considerable length of time. This was the ground on which Ajaib Singh J (as he then was) held that there was insufficient evidence to support an equity in *Charles Grenier Sdn Bhd v. Thien Hee & Sons Sdn Bhd* [1980] 1 MLJ 184. In *Ooi Ai Seng v. Chan Lin Lam* [1973] 2 MLJ 20, the Federal Court stressed the need for such evidence. Accordingly, I hold that the first defendant has failed to establish that he had an equity over the portion of lands occupied by him. In any event, the fact that the first defendant had been in occupation on his portion of the land rent-free, and has been using it as a source of income for over 40 years is a sufficient satisfaction for his expenditure and, accordingly, he cannot be said to have suffered any detriment to found an equity in his favour. Even if it can be argued that the first defendant had a valid equity he, having been only allowed to occupy his portion of the land and build a house thereon, had only an agreement for a lease which is capable of subsisting for only a maximum of 30 years (see *Siew Soon Wah & Ors v. Yong Tong Hong* [1973] 1 MLJ 133. In the circumstances, the equity, having commenced in 1957, would have been satisfied in 1987 and its termination is in accordance with law (see *Saadian bte Karim v. Ong Ting Chai* [1996] 5 MLJ 646 and *Ganesha*

A *Sdn Bhd v. Chua Hock Chye* [1996] 5 MLJ 587). In any event, as I said in an earlier part of the judgment, the registered title of the plaintiff will defeat the prior equitable interest of the first defendant if it can be argued that he had such an interest. (emphasis added)

[50] However according to the defendants, the Federal Court in *Letchumi*
B *Ammal Chellapa v. Nam Fong Housing Sdn Bhd* [1982] CLJ 295; [1982] CLJ (Rep) 168; [1982] 2 MLJ 19 dismissed the appeal by the appellant who had built a squatter house on a piece of land owned by the respondent. In that case, Syed Othman FJ held as follows at p. 171 (CLJ); pp. 20-21 (MLJ):

The fact that the owner took court action to enforce the contract in
C about a month after default not only shows that time was of the essence, but also dispels the allegation that the respondent could have been responsible for the tenant refusing to move out in time. It was not disputed that the appellant squatted on the land; she unlawfully occupied the land by building a house which she rented out. No evidence was adduced that she had obtained the permission of anyone
D before doing so, or that she had been paying anything for occupying the land. On this consideration by itself, the owner was entitled, using no more force than reasonably necessary, to remove the house without even asking the appellant's permission. *At law a squatter or trespasser has no right whatsoever to what he has affixed on the land without permission. The house was the product of a trespass. There is no question of the owner of land having to*
E *purchase the house or having to pay compensation for its removal*. The agreement in our view was nothing more than an accommodation or expression of goodwill by the owner of the land to the appellant, provided the agreement was performed in time...

In reference to benefit we have been referred to a number of authorities.
F We do not think they are of any assistance in the present case. We have not been shown – nor are we aware of – any authority where a squatter or trespasser can be awarded compensation for squatting or trespassing or removal of any fixture put on the land by the trespasser. The present case stands on its own. (emphasis added)

G **[51]** More recently, Stephen Chung JC (as he then was) in the High Court case of *Liaw Kar Tay & Ors v. Superintendent of Lands & Surveys Limbang Division & Anor* [2014] 9 MLJ 401 involving the plaintiff who had lived for more than 50 years in a house his parents allegedly bought from another on a parcel of land of the defendant held as follows at pp. 408-409 and 410:

H [15] From the evidence before the court, the land that the plaintiffs had been occupying was state land. *They were squatters simpliciter on the state land. The plaintiffs did not have and could not produce any license or permit or any authorisation from the defendants to occupy the land. There was no evidence that they occupied the land with the consent or acquiescence of the defendants. There was no evidence that the defendants or their servants or agents had encouraged or*
I *invited them to settle on the land. They did not testify that they had equity in the land. No license or acquiescence could arise or should be implied merely from their occupation of the land*.

[21] Further, there was no evidence that the defendants or their officers or servants or agents had encouraged or made any promise or gave any expectation to the plaintiffs that the plaintiffs would be given the land. Instead, the evidence showed that their parents moved from Brunei to settle in Kpg Seloting, Lawas. The evidence showed that their parents had rented the house built by Teo Kim Huan on the state land. The evidence showed that after the defendants had rejected their applications to be alienated the land, the defendants had offered a parcel of land to the plaintiffs *in lieu* of Lot 503. The Mahindar Singh said that they rejected this offer because the land offered to them was quite far. Therefore there were no merits in the plaintiffs' submissions.

[22] For the reasons given, the plaintiffs have failed to prove their claims against the defendants in this action. The plaintiffs' action is dismissed with costs of RM10,000. (emphasis added)

[52] The plaintiffs in retort submitted that they as settlers were not squatters but licensees coupled with an equitable interest because of them having expended monies in the property. They referred to several other High Court cases of *Lee Eng Teh & Ors v. Teh Thiang Seong & Anor* [1966] 1 LNS 79; [1967] 1 MLJ 42, *Cheng Hang Guan & Ors v. Perumahan Farlim (Penang) Sdn Bhd & Ors* [1994] 1 CLJ 19; [1993] 3 MLJ 352, *Toh Kheng Heng & Anor v. Ahmad Fauzi Mohd Taufek* [1994] 1 CLJ 547; [1994] 1 MLJ 356 and *Hong Leong Bank Bhd v. Goh Sin Khai* [2005] 3 CLJ 24; [2005] 3 MLJ 154. In particular, they focussed on the Court of Appeal case of *Sentul Murni Sdn Bhd v. Amirudin Kamarudin & Ors* [2000] 4 CLJ 375; [2000] 4 MLJ 503 where the respondents were found to be licensees coupled with equity by reason that they were continuous occupants of the land that was known to or acquiesced/encouraged by the State Authority and/or the DBKL, the predecessors of the appellant. In that case, Shaik Daud JCA held as follows at pp. 377-379 (CLJ); pp. 505-507 (MLJ):

The central issue before the court was the status of the respondents as far as the land is concerned. The appellant contended all along that the respondents were squatters *simpliciter* and therefore they were trespassers on the land. The respondents on the other hand, are not claiming any title to the land. That the appellant is the registered owner of the land is undisputed. The respondents while conceding that the appellant is now the registered owner, are contending that they are not squatters *simpliciter* but they occupied the land with a licence in equity.

The land appeared to have a chequered history. Initially the land was a Malay Reserve Land but such status was cancelled. Based on the evidence of a land surveyor, one Seah Kok Seang @ Sheah Si Ba, who testified as an expert witness, the learned judge accepted his expert testimony that the malay reservation status was de-*gazetted* by *Gazette* Notification No 4851/1932 dated 22 June 1932. This was confirmed in a letter from the Director of Land and Mines dated 9 February 1996. The respondents contend that when the appellant became the registered owner of the land, it knew or ought to have known of the equity which

had existed long before it became the owner. The respondents also contended that their continuous occupation of the land was known to or expressly or impliedly acquiesced and/or encouraged by the state authority or by DBKL. It is also in evidence that between 1960 and 1990 various amenities were provided for by the authorities such as a town hall, three mosques, water and electricity supply, telephone services, a clinic and the roads were paved. DBKL built a second town hall and a building to conduct women's development activities and a number of religious schools. The respondents also led evidence to show that this village, called Kampung Chubadak was self-governed and self-administered. There was also evidence that prior to the formation of the Wilayah Persekutuan, the Selangor state government formed a body known as Jawatankuasa Kemajuan dan Keselamatan Kampung ('JKKK') in this village which was headed by the Ketua Kampung. When Wilayah Persekutuan was established on 1 February 1970, the JKKK was replaced by DBKL officials and the post of Ketua Kampung was abolished. In 1987, however, this post was revived and the Ministry of Wilayah Persekutuan appointed the former Ketua Kampung to administer this village. In the 1960s, the Kuala Lumpur District Officer prepared a layout plan for the former mining land at which Kampung Chubadak Tambahan and Kampung Puah Seberang are situated, the object of which was to sub-divide the land into various lots which would be allocated to the then residents occupying the land. It is the contention of the respondents that between 1960 and 1990, many dignitaries made official visits to this village and they included politicians and royalties. In fact during the official launch of the Klinik Kesihatan Kanak-Kanak dan lbu in Kampung Chubadak Tambahan, the then Menteri Besar, Dato' Harun Idris, promised that the Selangor state government would take certain measures to enable the residents of the village and an adjoining village to obtain ownership of the land they occupied. This, the learned judge found, was not a mere political gimmick but was based on a decision of the then Selangor State Executive Council...

Having traced the history of the land and as to how and when each of the respondents came to be on the land, and considering the Federal Court decision in Bohari bin Taib & Ors v. Pengarah Tanah Galian Selangor [1991] 1 MLJ 343, the learned judge came to the conclusion that the respondents were not squatters simpliciter, as the appellant was trying to make them out to be. He found there was consent and licence from the state authority that the respondents can occupy or continue to occupy the land. The respondents also established that based on the state authority's acquiescence, encouragement and approval, they expended money and labour to improve and further develop the land in Kampung Chubadak Tambahan, which was a former mining land. All these were known to the predecessors of the appellant. (emphasis added)

[53] On the history of the case herein, it cannot be denied that the predecessor of the first defendant, Berjuntai Tin Dredging Ltd had permitted the mother of Mahindar Singh deceased and later himself and his family to continue to occupy the property after having acquired it from Pologa Nathan s/o Muthiah. When the first defendant was initially granted

the mining lease in 1984, the first defendant was undoubtedly aware of the existence of various occupants residing in houses on the land including Mahindar Singh deceased and his family living in the property. However I find that the defendants neither promised nor represented to the plaintiffs that they were entitled to occupy the property in perpetuity but the defendants did not eject them as well. I noticed that the first defendant's mining lease of 1984 to 2003 contained a stipulation that:

> The Lessee shall pay compensation as the Collector of Land Revenue, Gombak may assess for any disturbance or any damage caused by the lessee, his servants or agents to any building, fish pond, football ground or cultivated ground of the settlers on the land hereby leased or their eviction from the said land and resitting of the building on the other land suitable for home habitation will be made by the lessee.
>
> This stipulation was however not seen in the subsequent approval of the renewal of the First Defendant's mining lease by the Pejabat Tanah dan Galian Selangor.

[54] By reason of the need to carry out the river diversion project on the land and upon the first defendant having completed the construction of the house relocation scheme, the first defendant's solicitors on 4 December 2006 wrote to the Mahindar Singh's solicitors that unless Mahindar Singh deceased accepted the first defendant's offer to relocate that was made on a goodwill *ex gratia* basis, Mahindar Singh deceased was required to surrender vacant possession of the property by 3 January 2007. I find and hold that the first defendant's offer was a genuine one in the attempt to amicably resolve the problem of recovery of the property between the parties but without admission of any liability to the plaintiffs.

[55] In the circumstances, I find that the plaintiffs were not squatters *simpliciter* as that seen in *Letchumi Ammal Chellapa v. Nam Fong Housing Sdn Bhd* (*supra*). I am also satisfied that the defendants have at all material times neither represented nor encouraged the plaintiffs to believe that they have an interest in the land where the property is affixed and thereby proprietarily or even promissorily estopped. The plaintiffs were in my view licensees as they settled on the land and occupied the property with the permission of the first defendant's predecessor as well as with the knowledge of the first defendant when granted the mining lease in 1984. The facts herein are closer to that seen in *Sentul Murni Sdn Bhd v. Amirudin Kamarudin & Ors* (*supra*). In view that the property was acquired for valuable consideration that was subsequently assigned to Mahindar Singh deceased, I find and hold that Mahindar Singh deceased was hence a licensee coupled with equity. The rest of the plaintiffs are only bare licensees at all material times. It is immaterial for purposes of importation of equity if several of these plaintiffs were running businesses in the property over the years.

Resultant Consequences And Remedies

[56] Notwithstanding that the plaintiffs are licensees as found, they were only entitled to occupy the property and remain on the land throughout the subsistence of the license. In this case the licenses were revoked on 3 January 2007.

[57] In *Ganesha Sdn Bhd lwn. Chua Hock Chye & Lain-Lain* [1996] 1 LNS 97; [1996] 5 MLJ 587, Augustine Paul JC (as he then was) held at pp. 590-591 as follows:

> Plaintif adalah pemilik sebidang tanah yang dikenali sebagai Lot 45 Geran Peringkat Pertama No 3080 Pekan Tanjung Kling ('tanah tersebut'). Beliau telah membeli tanah tersebut daripada seorang bernama Seat Tiam Hock kira-kira dalam bulan September 1979. Rumah No 5723-C ('rumah tersebut') telah dibina atas sebahagian tanah itu. Defendan keempat telah menduduki rumah tersebut. Bangunan asal di atas tapak ini di mana rumah tersebut berdiri sekarang telah termusnah dalam satu kebakaran dalam tahun 1962. Seterusnya ia telah dibina semula dalam tahun 1964. Pelan rumah tersebut telah disediakan pada 9 April 1962 serta diluluskan oleh Majlis Daerah Desa pada 21 Januari 1963. Plaintif mengeluarkan satu notis mengosongkan kepada defendan keempat pada tahun 1984 melalui bekas peguamcaranya Tetuan Yau Jiok Hua & Co. Namun defendan keempat terus menduduki tanah tersebut dan satu lagi notis mengosongkan bertarikh 13 April 1995 telah diberikan.
>
> Daripada keterangan defendan keempat, saya berpuas hati bahawa beliau telah membina semula rumah tersebut dalam tahun 1964 dengan kos RM16,000 selepas persetujuan dari pemilik tanah masa itu pada kadar cukai tanah RM2.40 setahun dan kemudiannya pada kadar RM12 setahun. Saya juga mendapati bahawa pemilik lama telah mengizinkan defendan keempat menduduki premis itu selagi pemilik lama mengingini sedemikian. Saya juga mendapati daripada keterangan kedua-dua pihak bahawa defendan keempat tidak membayar sebarang sewa selepas bulan September 1979. Sebenarnya defendan keempat telah memberitahu dalam keterangannya bahawa selepas bulan September 1979 beliau tidak lagi membayar sewa kerana tiada sesiapa datang untuk memungut sewa dan beliau pun tidak siasat mengapa. Beliau juga tidak tahu siapakah pemilik-pemilik baru...
>
> *Oleh kerana saya mendapati bahawa defendan keempat telah membina rumah tersebut dengan keizinan tuan tanah, beliau telah memperolehi penyewaan bersama-sama ekuiti ke atas rumah tersebut. Dalam hal ini rujukan boleh dibuat kepada kes Inwards v. Baker [1965] 1 All ER 446 dalam mana Lord Denning MR berkata di ms 448:*
>
> > *… It is quite plain from those authorities that, if the owner of the land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with an equity.*

Di ms. 449, Lord Denning bersambung: A

> … *It is for the court to say in what way the equity can be satisfied*. (emphasis added)

See also *Pembangunan Darjat Sdn Bhd v. Wong Jie Tshung & Ors* [2000] 1 LNS 5; [2000] 2 MLJ 212. B

[58] Consequently and in the case herein, the first defendant as the lessee of the land wherein the property is sited has the right to issue the notice to quit to the plaintiffs to recover vacant possession of the land and I so find and hold accordingly. In addition, I also find and hold that they have the right to demolish the property when vacant possession is obtained in order to divert the river that flows through the land. This is provided in s. 70 of the Mineral (Selangor) Enactment 2000 which prescribes: C

70. Rights under mining lease

(1) A mining lease shall, subject to this Enactment and to the terms and conditions specified in the lease, confer upon the lessee thereof the rights: D

(a) to exclusively mine the land in respect of which the lease has been granted in accordance with:

(i) in the case of a mining lease authorising a small scale operation, the pre-feasibility study submitted under section 63; or E

(ii) in the case of a mining lease authorising a large scale operation, the mine feasibility study approved under section 73; and

(b) subject to section 71: F

(i) and any other law relating to minerals, to store, transport, process and sell any mineral extracted and dispose of any waste;

(ii) to use any timber, sand or gravel as required for mining within the mining land; G

(iii) to use such portions of the mining land as may be required for the purposes of growing plants or vegetables, or keeping animals, poultry or fish as may be reasonable for use by the employees at the mine; H

(iv) to use such portions of the mining land as may be required for the purpose of erecting houses, lines, sheds or other buildings as may be reasonable for the purposes of the mine or for use by the employees at the mine;

(v) **to do any act or thing and establish and maintain any road and facility to effectually carry out mining operations, on or under the land**; and I

A (vi) **to use, occupy and enjoy the land in respect of which a mining lease has been granted for mining purposes**.

(2) The mining lease shall not, subject to this Enactment and to terms or conditions specified in the lease, entitle the lessee the exclusive right within the mining land in respect of which the lease has been granted to use any public road, rail, canal, river and telecommunications system as may be required for mining. (emphasis added)

B

[59] However the first defendant's recovery of vacant possession of the land has to be subject to compensation in satisfaction of the equity of Mahindar Singh deceased only who was the licensee coupled with equity. No compensation is payable to the other plaintiffs who were bare licensees.

C

[60] The only cogent evidence of the equity produced at trial by the plaintiffs is the cost of acquisition of the property amounting to RM3,500. Although there were assertions of upgrading or improvements made to the property by the plaintiffs, there was no documentary evidence of them produced, particularly the costs expended. In the premises, I adjudge the value of compensation at RM3,500. This is to my mind a fair value after taking into consideration that the plaintiffs had occupied the property rent-free in excess of 50 years. The compensation cannot in my view be on the basis of an equivalent landed property at market prices principally by reason that the first defendant deceased had no interest in the land where the property is sited. I also noted the compensation that was awarded in *Pembangunan Darjat Sdn Bhd v. Wong Jie Tshung & Ors* (*supra*) was RM5,000 only. In addition, I am of the view that the estate of Mahindar Singh deceased is entitled to reasonable costs of moving out which I fix at RM15,000.

D

E

F

Conclusion

[61] I am mindful that the plaintiffs have strong sentimental attachment to the property but not everything in possession in this world will last forever. This litigation must have been a painful experience but nonetheless it has to be decided one way or the other based on established principles of the law.

G

[62] For the foregoing reasons, I allow the claim of the first plaintiff only in prayer (b) and (l) of para. 59 of the amended statement of claim for compensation amounting to RM18,500 with simple interest at 5% per annum from the date of filing of the writ until full realisation. The rest of the claims in prayers (a) to (k) of para. 59 of the statement of claim including in prayers (a) to (l) claimed by the other plaintiffs are disallowed.

H

I

[63] As for the counterclaim, I allow prayers (a) and (b) of para. 34 of the amended statement of defence and counterclaim subject to the amendment that the date of the giving of vacant possession and demolition of the property be within six months from the service of the sealed order of the court.

[64] Since both sides have succeeded in their respective claim and counterclaim, the parties are to bear their own costs.